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REPORT OF STANDING COMMITTEE ON LEGISLATIVE METHODS

Your committee on legislative methods has been in coöperation with a special committee of the American Bar Association on legislative drafting of which the chairman of your committee was a member, and to the printed report of which, presented at Montreal on September 2, 1913, it begs to call attention and make reference.

The existing widespread movement toward improving legislative methods has two very different sides: one relating to the content, and the other to the form of legislation, the former being concerned with the collection and digesting of information and reference material to be placed at the disposal of members of the legislature, the latter with procedural safeguards aiming to secure a careful scrutiny of bills, and with the creation of a drafting service as an aid to the legislature.

Your committee has given its attention chiefly to the latter side of the problem.

1. ORGANIZATION OF DRAFTING SERVICE

According to a statement prepared by Mr. H. Goddard of the Legislative Drafting Association of New York for the committee of the American Bar Association (see *Report*, p. 15, appendix A), there were at the beginning of the year 1913 eleven States which had made provision for a legislative reference service distinct from drafting service, three States which had made provision for drafting service distinct from reference service (but these three States: Connecticut, Massachusetts and New York, had also provision for reference service) while in nine States the two services were combined in one bureau. In 1913 Illinois (named in the first list of eleven States) made provision for a reference bureau, which is also to render assistance in drafting, so that this State will have to be added to the last list; and there may have been other changes and additions in the present year.

The legislative reference bureau and the drafting bureau should be under one single director. They must coöperate closely and it is visionary to expect that two separate heads will work together in the peculiarly close manner required for the greatest efficiency in this work. The pri-

mary purpose of the legislative reference bureau is to supply the drafting bureau with the exact data and models required for drafting. It must be the collecting and classifying agency to serve the drafting bureau. To do this it must have intimate touch with the actual work and needs of the bill drafters. On the other hand, the draftsmen should at times be a part of the reference bureau in order that they may have their grasp of the subjects more firmly fixed and be able to utilize better the fruits of research made available through the reference work and in order that they may, by suggestions from experience, strengthen the reference work. The point of view of each must be kept constantly before the other. The reference bureau's work will be ineffective if it is not organized with fine precision to meet the needs of the drafting bureau and the drafting bureau will bring few of the good results which should come unless it is willing and able to profit by the researches of the reference bureau.

It should be emphasized that no library, no matter how exhaustive its collections, can be effective for the drafting bureau. It requires only a small working collection of the essence of things in books, reports, pamphlets, etc., drawn off from the great masses of information and so arranged as to do the exact work desired. The legislative reference library should be one which serves the workers and not merely the thinkers. The man who uses its materials has not the time or the inclination to make exhaustive researches. If he had there would be less need of this kind of a library.

The work of two bureaus requiring such intimate relations and such precise coöperation should in the very nature of things be under one control. It is presuming too much upon the pliability of human nature to expect independent bureaus to work harmoniously for the best ends. Mutual jealousies and misunderstandings are almost certain to mar the work if the two bureaus are made separate.

The best method would seem to be to have one director supervise the whole operation with a bill drafting department and a legislative reference department under him.

The provision for the personnel of the drafting service should be such as to protect it as far as possible from "political" appointments. In view of the possibility of influencing the effect and policy of a measure through verbal changes which are apparently slight or the effect of which is not obvious, it is of the utmost importance that draftsmen should enjoy the absolute confidence of legislators, and that in their turn they should have that professional sense of pride and devotion with

reference to their work, with a reputation at stake in its proper execution, which can hardly be expected in places which are known to be distributed on the basis of political service.

The most effectual means of producing this result is the placing of the drafting bureau under civil service rules, or where the civil service laws do not extend to the legislative department, under regulations of a similar character securing selection on the basis of merit and experience, and this method should be applied to the head of the bureau as well as to subordinate positions in it. The practice said to prevail in Connecticut according to which the clerk of bills (the drafting official) expects to advance at the next session to another place, must from this point of view be prejudicial to the most effective organization of the drafting service (see p. 31, *Report of American Bar Association Committee*).

If the work of drafting bureaus is to produce in course of time scientific principles of statute drafting your committee deems it important that there should be some medium of exchange of information with regard to interesting problems or significant developments in statutory legislation. Without some such organ no movement can hope for vitality or unity of purpose. The "Legislative notes" of *The American Political Science Review* may be advantageously used for this purpose, but during legislative sessions drafting bureaus should coöperate in the publication of bulletins of information through which items of legislative interest might become known within the shortest possible space of time.

2. CHANGES IN LEGISLATIVE PROCEDURE

It is a common experience that more attention is given to form and language in bills prepared by commissions or government departments having the benefit of expert assistance, than in bills owing their introduction to the initiative of members and prepared in the office of some private practitioner. Everything, therefore, that favors bills of the first description is apt to mean a gain for a higher standard of draftsmanship.

In *The American Political Science Review* of May, 1913, Representative Hull of Illinois comments upon a rule which the house of representatives of that State adopted at its recent session, whereby one morning of each week was set apart for the consideration in committee of the whole of measures recommended by the governor. The recognition and preference thus given to administration bills will naturally tend to

place upon the executive department an increased responsibility for their form as well as their substance, and may in course of time result in the regular employment of expert assistance in the drafting of these measures.

Still more significant was another proposition, likewise offered in Illinois, to establish a joint legislative commission composed of the governor, lieutenant-governor, speaker of the house, chairman of the committees of appropriations of the senate and the house, chairman of the committees on judiciary of the senate and the house, together with five other senators and five other representatives, to serve until the convening of the next general assembly, charged with the duty of formulating a legislative program and preparing the necessary bills, and empowered to act through committees appointed from within or without its membership.

As passed by the legislature, however, the bill transformed the commission (omitting from its proposed membership the presiding officers of the houses and the ten members at large) into merely a "joint legislative reference bureau" with power to establish a reference and drafting service.

The plan as originally proposed might have been developed into an efficient organization for giving to the work of preparing legislation that continuity and systematic control which it now lacks entirely; and would have allowed of a much more perfect maturing of legislative projects than is now generally obtainable. Some such measure which is probably everywhere possible without constitutional amendment deserves the serious consideration of other States.

Under our system of government it would not be practicable, and probably not desirable, to reduce the initiative of private members in legislation to that insignificant place which it holds in European countries. Perfect liberty of introducing bills necessarily produces considerable variety and independence of style, and practically results in much futile and misdirected effort. Some of the undesirable effects of the system might perhaps be avoided by a relatively simple expedient. Legislative rules might well provide that bills should be introduced only on blanks furnished by the clerk. These blanks would naturally contain a correct enacting clause, and it would be easy to print on them simple directions regarding title, etc., with references to constitutional requirements and house rules. If a legislative body thought fit, it might require space to be provided on these blanks for brief statements regarding the source and sponsorship of the bill, its desired effect and the present state

of the law, and giving other similar information aiding an intelligent understanding of the proposed measure. All this could probably be accomplished by a simple house rule.

3. FORMULATION OF DIRECTIONS AND MODEL CLAUSES

It is hoped and may be expected that the general establishment of drafting bureaus will lead to the development of scientific methods of legislation, that is to say, methods of drafting which will secure: conformity to constitutional requirements and to other principles approved by experience; adequacy of the provisions of the law to its purpose; coördination with the existing law, and the utmost simplicity of form consistent with certainty.

It deserves however serious consideration whether something cannot be done at the start to aid and direct the work of draftsmen, many of whom inevitably will be relatively untrained and inexperienced.

The *Report of the Bar Association Committee* contains the following observations upon this subject:

The efficiency of the drafting service depends not only on the personnel, and on the recognition of certain fundamental principles of organization and operation, but also, your committee believes, on the existence of a harmonious body of principles to be observed in the drafting of legislation. It is, however, obvious that some systematic plan and effort will be needed to produce a harmonious body of principles which can be used by drafting bureaus.

As we look to constructive work in economic and social science to furnish principles of legislation on its substantive side, so we have to look to legal science to furnish such principles for the formal or technical side of legislation. Thus the history of liquor legislation in this country furnishes much valuable data in the matter of law enforcement which should be made available in the drafting of other classes of statutes; the same is true of factory and labor legislation for the problem of meeting the most obvious contrivances for evading statutory requirements.

Unfortunately there is no book written in the English language discussing, in the light of administrative and judicial experience, the legal ways and means by which a given legislative policy can best be rendered effective, or the arrangements and institutions which at present serve that end. The reason for this must be found in the large commercial demand for legal works available for the business of litigation, which has absorbed the attention of jurists to the utter neglect of scholarly or literary service to the no less important business of legislation.

The lawyer's treatment of the law is analytical, the legislator's constructive. To the lawyer it is a fixed quantity to which he must

adjust himself, to the legislator a potential force which he may fashion for his purpose. Obviously, the two points of view are entirely different. The material that the lawyer needs has been collected and digested with a degree of completeness that leaves hardly anything to be desired. But while the legal material that the legislator needs, the history of statutes and of their construction by the courts, may also be found, to a considerable extent at least, scattered through the law reports, there is no key to it through digests or treatises adapted for his purposes. In many cases the attorneys of private interests alone possess the knowledge that is needed for intelligent legislation and the public does not always profit by that knowledge.

Your committee, therefore, submits that the Association should lend its influence and aid toward the work that needs to be done in this field. The object to be aimed at ultimately would be the production of something like a legislative manual or code, a collection of directions or suggestions to draftsman, and of model clauses for constantly recurring statutory provisions and problems. Carefully worked out, and having the sanction of the approval of representative bodies of lawyers and of students of legislation, such a guide could not fail of having considerable effect on drafting all over the country, and the establishment of drafting bureaus would be appropriately supplemented by giving their work from the very start a scientific and uniform direction.

There is also printed in connection with the *Report*, as Appendix C, a somewhat elaborate tentative draft of a topical plan for instructions to draftsmen and model clauses, an abstract of which follows this report.

The elaboration of this entire plan would be a work of several years; but some topics might be taken up as a beginning in order to determine whether the plan is feasible or not, and the following topics are suggested for this purpose: title; amending acts; general arrangement and language; referential legislation; adoptive acts, and penalties.

A further and much simpler step in the same direction would be to collect and make accessible all "model bills," drawn up under the auspices of associations representing particular interests. The following may be mentioned as bodies promoting legislation in particular fields: Commissioners on Uniform State Laws; National Association of Credit Men; National Drainage Association (model drainage law); National Tax Association; National Board of Fire Underwriters (building code, etc); American Vigilance Association (vice); National Housing Association (tenement housing); Legislative Drafting Fund (Columbia University); National Civic Federation; American Automobile Association; National Fraternal Congress (regulation of fraternal orders); National Petroleum Associations (oil inspection); Investment Bankers Associa-

ation of America (blue sky laws); National Association of Real Estate Exchanges (conveyancing, licensing of real estate agents, etc.); American Mining Congress (mine accidents); National Consumers' League (women's labor); National Child Labor Committee (child labor); National Association of Dairy and Food Commissioners (pure food, cold storage, sanitation, etc.); National Board of Censorship of Moving Pictures; National Fire Protection Association; National Popular Government League; Governor's Conference.

Some of the bills thus produced represent not only the best information upon the respective subjects, but show also very considerable care in drafting; so the public utilities, workmen's compensation, child labor, model safety and pure food acts.

Many of these bills or acts contain clauses that can be made readily available for legislation on allied subjects.

A topical plan of standing clauses and directions should also be of value in the work of preparing indices of legislation. The librarian of congress has for a number of years recommended to congress the undertaking of a comprehensive comparative index of American statute law. If the work should be done with the same limitations that may be observed in all previous indices, it would in important respects fail to serve the purposes of the draftsman. Taking as an example Scott and Beaman's *Index Analysis of Federal Statutes*, in many respects a standard work, the student of the history of legislative methods is very apt to be disappointed in consulting it for his purposes. He desires to trace the use of oaths, of informers' shares, of forfeitures in the legislation of congress, and in looking up these words he will find a reference "see under Specific Topics." This practically means that he must search through the statutes as if there were no index. Or to give another illustration: mothers' pension laws are one of the interesting new phases of American legislation. Their significance is, of course, primarily sociological. It appears, however, that the pensions in some jurisdictions are granted by court orders. This means an entirely new method of administering charity, and to the student of legislative methods this is as important as the new substantive departure in giving relief. Yet it is safe to say that the ordinary index would give no clue to this innovation. Obviously it is only through a scientific topical plan of provisions regarding administration and operation, that attention can be directed to these developments and that a science of law drafting can be built up.

If the desirability of establishing some standard of drafting should be questioned, it ought to be sufficient to cite the recent income tax act in

support of the plea for reform. Measured by any kind of a standard of draftsmanship the act is certainly all that it should not be. As an act which addressed itself to business men and property owners, making considerable demands upon the conscience of the tax payers and imposing obligations touching the routine of management of pecuniary affairs, this act, above all others, should have been plain and lucid in its arrangement and language, and should have made its obligations unambiguous in substance, definite in incidence, and reasonably capable of discharge. Instead of this, the act is the most perplexing measure that has issued from congress in many years. Its arrangement and the numbering of its clauses is extremely inconvenient for the purposes of reference, the terminology used is not consistent or distinctive, and often vague and indefinite. And yet the general impression seems to be that these defects of expression are in some way inevitable and inseparable from this kind of legislation. This, of course, is not true. If the style of the English income act is likewise involved, it is because it antedates the reform of English legislative style, and the Prussian law shows that even an income tax law can be clear and intelligible, and that we are suffering simply from a bad tradition which ought to be broken. A glance at the new federal reserve act will demonstrate the possibility of writing a complicated law in clear language and with a due regard for the orderly arrangement of its parts. A comparison of this act with the Tariff Act or with the pending Immigration Bill shows that congress absolutely lacks a uniform standard with regard to the formal side of its business, a fact which it probably fails to realize.

If your committee is continued and authorized to undertake the formulation of propositions upon the topics indicated, for further report next year, it is hoped that it will have the coöperation and aid of the Bar Association committee. It is not intended that either of the two associations should at present be committed to the endorsement of any particular plan, but all that is asked at present is leave to undertake the working out of drafting principles on selected topics and to present another report next year.

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APPENDIX

ABSTRACT OF A TOPICAL PLAN FOR INSTRUCTIONS TO DRAFTSMEN AND
MODEL CLAUSES*A. Expression in general*

1. Title.
2. General arrangement.
3. Amending acts.
4. General provisions regarding language.
5. Referential legislation.
6. Definitions.

B. Operation

7. Provisions for taking effect of act.
8. Time limit and temporary acts.
9. Transitional provisions.
10. Repealing, saving and limiting clauses.
11. Adoptive acts.
12. Optional acts (i.e., for individuals).

C. Substantive requirements

13. Persons charged by act.
14. Qualifying clauses and exceptions.
15. Reference to intent.
16. Presumptions.
17. Generic and specific requirements.
18. Requirements with a view to publicity.
19. Facilities for discharge of duties.
20. Securities of compliance.

D. Administration

21. Designation of officials.
22. Qualifying for office; exercise of powers.
23. Official powers.
24. Organization of board.
25. Relation to local authorities.

E. Delegation of powers

26. Administrative regulations.
27. Administrative orders.
28. License.
29. Permit or dispensation.
30. Revocation of license.
31. Notice.
32. Hearing and evidence.
33. Powers for information.
34. Creation of districts.

- 35. Finance.
- 36. Contracts.
- 37. Condemnation by eminent domain.

F. Enforcement

- 38. Penalties.
- 39. Liability.
- 40. Nullity.
- 41. Condemnation and abatement.
- 42. Obstruction.
- 43. Enforcement proceedings.
- 44. Jurisdiction and procedure of courts.
- 45. Remedies and review.